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10
11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF NEVADA**

13 Rock Vault Tours, Inc., a Delaware
14 corporation,

15 Plaintiff,

16 v.

17 David Kershenbaum, an individual,

18 Defendant.

Case No.: 2:16-cv-00096

COMPLAINT

(JURY DEMAND)

1 For its Complaint, Plaintiff Rock Vault Tours, Inc. (“Rock Vault” or “Plaintiff”) alleges
2 the following against Defendant David Kershenbaum (“Kershenbaum” or “Defendant”):

3 **NATURE OF THIS ACTION**

4 1. This is an action, brought pursuant to the Declaratory Judgment Act, 28 U.S.C. §
5 2201, *et seq.*, seeking a declaratory judgment that Plaintiff has not infringed Defendant’s claimed
6 copyrights in the script and format of the shows known as Raiding the Rock Vault and Raiding
7 the Country Vault.

8 **PARTIES**

9 2. Plaintiff Rock Vault is a Delaware corporation qualified to do business in the
10 State of Nevada.

11 3. Upon information and belief, Defendant David Kershenbaum is an individual
12 residing in Los Angeles, California.

13 **JURISDICTION AND VENUE**

14 4. This Court has original subject-matter jurisdiction over this action pursuant to 28
15 U.S.C. § 1331 and 1338 because Plaintiff’s cause of action, which seeks a declaration of non-
16 infringement under the Copyright Act of 1976, 17 U.S.C. § 101, *et seq.*, (the “Copyright Act”),
17 arises under the laws of the United States.

18 5. This Court has general personal jurisdiction over Defendant because, upon
19 information and belief, Defendant conducts continuous and systematic business within this
20 judicial district and the exercise of general personal jurisdiction over Defendant would otherwise
21 be reasonable. In addition, this Court has specific personal jurisdiction over Defendant because
22 Plaintiff’s cause of action arises from Defendant’s activities within this judicial district including,
23 without limitation, working on the creation, production, and direction of the Raiding the Rock
24 Vault show while physically present in Las Vegas, Nevada, and the exercise of specific personal
25 jurisdiction over Defendant would otherwise be reasonable.

26 6. Venue is proper pursuant to 28 U.S.C. § 1391(b), because jurisdiction is not
27 founded solely on diversity of citizenship and a substantial part of the events or omissions giving
28 rise to Plaintiff’s cause of action occurred in this judicial district.

GENERAL ALLEGATIONS

7. Rock Vault produces and runs the highly popular and award winning stage show “Raiding the Rock Vault,” currently being performed at The Tropicana Las Vegas. Voted Best Musical in Las Vegas by the Las Vegas Review Journal reader’s poll two years in a row, the Show is a story of classic rock, performed by members of some of the greatest classic rock bands in history, with artists performing anthems from: The Rolling Stones, The Who, The Doors, Led Zeppelin, and other iconic rock bands.

8. Prior to performing Raiding the Rock Vault at The Tropicana Las Vegas, Rock Vault performed Raiding the Rock Vault at the Las Vegas Hotel and Casino (the “LVH”), which is now known as the Westgate Las Vegas Resort and Casino (the “Westgate”).

9. Kershenbaum was, for a period of time, co-director and co-writer of Raiding the Rock Vault while the show was performed at the LVH.

10. Rock Vault requested that Kershenbaum disengage from his duties in connection to Raiding the Rock Vault due to several instances where Kershenbaum’s lewd, offensive, and even unlawful behavior reflected poorly on Rock Vault and the show.

11. Kershenbaum does not currently have any role in the show as it is now being performed at The Tropicana Las Vegas.

12. Rock Vault co-owns U.S. copyright registrations for the format and script of “Raiding the Rock Vault” (U.S. Reg. No. Pau003661723 and U.S. Reg. No. Pau003661716) (the “Copyrights”) through an assignment from a previous co-owner of these Copyrights, John Payne.

13. Kershenbaum is purportedly a co-owner of the Copyrights as well.

14. Despite knowing that Rock Vault is a co-owner of the Copyrights, Kershenbaum has delivered a cease and desist letter to Rock Vault’s counsel claiming that Rock Vault has infringed the Copyrights by performing the show at The Tropicana Las Vegas, and that Rock Vault’s anticipated new show, Raiding the Country Vault, also infringes the Copyrights.

15. Kershenbaum’s letter demands that Rock Vault “immediately cease and desist from any and all activities that in any way relate to the use and/ or exploitation of any copyrights and/or other intellectual property owned in whole or in part by Mr. Kershenbaum”

1 16. In his letter, Kershenbaum offers to sell Kershenbaum's co-ownership interest in
2 the Copyrights to Rock Vault for upwards of \$1,000,000.

3 17. The letter also contends that if Rock Vault does not "sufficient[ly] respon[d]" by
4 January 22, 2016, Kershenbaum will proceed to enforce his rights, including through the
5 "commencement of litigation and/ or the pursuit of injunctive relief to enjoin [performances of
6 Raiding the Rock Vault]."

7 18. Of course, as Rock Vault is a co-owner of the Copyrights, Kershenbaum's
8 copyright infringement claims are unfounded and fail as a matter of law.

9 19. However, in light of Kershenbaum's threat to seek an injunction to enjoin further
10 performances of Raiding the Rock Vault and to prevent Rock Vault from launching its new
11 show, Raiding the Country Vault, Rock Vault believes that a real and justifiable case or
12 controversy exists that is ripe for adjudication.

13 **Count I – Declaration of Non-Infringement – Raiding the Rock Vault**

14 20. Rock Vault incorporates each of the foregoing allegations as if fully set forth
15 herein.

16 21. A real and justiciable case or controversy exists between Rock Vault and
17 Kershenbaum concerning whether Rock Vault has infringed the Copyrights based upon its
18 performance of Raiding the Rock Vault.

19 22. Such controversy is ripe for adjudication.

20 **Count II – Declaration of Non-Infringement – Raiding the Country Vault**

21 23. Rock Vault incorporates each of the foregoing allegations as if fully set forth
22 herein.

23 24. A real and justiciable case or controversy exists between Rock Vault and
24 Kershenbaum concerning whether Rock Vault will infringe the Copyrights based upon its
25 anticipated performance of Raiding the Country Vault.

26 25. Such controversy is ripe for adjudication.

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PRAYER FOR RELIEF

WHEREFORE, Rock Vault prays that the Court enter judgment in Rock Vault's favor and against Kershenbaum, and that the Court enter judgment:

- A. Declaring that Rock Vault is a co-owner of the Copyrights;
- B. Declaring that Rock Vault has not infringed the Copyrights based upon its performance of Raiding the Rock Vault;
- C. Declaring that Rock Vault has not infringed the Copyrights based upon its performance of Raiding the Country Vault;
- D. Awarding Rock Vault its costs and reasonable attorneys' fees; and
- E. Awarding Rock Vault such other and further relief as the Court deems just and equitable.

JURY DEMAND

Rock Vault demands trial by jury on all issues so triable.

Dated: this 15th day of January, 2016.

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